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Summary record of the 2344th meeting

Held at Headquarters, New York, on Wednesday, 15 March 2006, at 3 p.m.

Chairperson: Ms. Chanet
later: Ms. Palm

Contents

Consideration of reports submitted by States parties under article 40 of the Covenant and of country situations (*continued*)

Third periodic report of the Democratic Republic of the Congo

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The meeting was called to order at 3.10 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant and of country situations (*continued*)

Third period report of the Democratic Republic of the Congo (CCPR/C/COD/2005/3, CCPR/C/COD/Q/3)

1. *At the invitation of the Chairperson, the delegation of the Democratic Republic of the Congo took places at the Committee table.*

2. **Ms. Kalala** (Democratic Republic of the Congo), introducing her country's third periodic report (CCPR/C/COD/2005/3), said that the new Constitution, which had been in effect since February 2006, stated that all Congolese were equal before the law, that the authorities would work to ensure the elimination of all forms of discrimination against women and that gender mainstreaming would be guaranteed in Government institutions. It also guaranteed certain basic rights including the right to life and the right not to be tortured or held in slavery. There was currently no legal definition of torture; however, a bill that would make torture a crime was currently being discussed in the Parliament. Slavery and forced labour were prohibited under both the Penal Code and the Labour Code.

3. Although the Democratic Republic of the Congo had not signed the Second Optional Protocol, it had imposed a moratorium on the death penalty. The moratorium had been lifted in September 2002. However there had been no executions as yet.

4. According to the Constitution anyone held in detention must be treated in such a way as to preserve their life, their physical and mental health and their dignity. The maximum duration of preliminary detention was set at 48 hours. The Constitution also referred to the principle of the inviolability of individual freedom, to the presumption of innocence, and the right to legal counsel and established the legality of certain punishments.

5. It further established that all human beings were born free and equal and it guaranteed respect for privacy, freedom of thought and of movement, freedom of religion, freedom of speech and freedom of the press. It banned war propaganda and racial hate speech and stated that no one could use part of the national territory as a staging area for subversive or terrorist activities against the Democratic Republic of the Congo or any other State. The Constitution guaranteed freedom of assembly and the freedom to hold and participate in demonstrations. It also guaranteed the freedom of trade unions and recognized political pluralism and contained provisions applicable to non-profit organizations. It protected the family and the right of all individuals to marry the person of the opposite sex of his or her choosing and to found a family, the rights of the child and the rights of minorities.

6. **The Chairperson**, after asking whether it would be possible for the Committee to receive copies of the new Constitution, invited the delegation to address the first 13 questions on the list of issues (CCPR/C/COD/Q/3).

Constitutional and domestic legal framework within which the Covenant is implemented, measures to fight impunity (article 2)

7. **Ms. Kalala** (Democratic Republic of the Congo), referring to question 1 of the list of issues, stated that custom was one source of law in her country, provided that it did not run counter to the law and to proper behaviour. For example, traditionally, if a dowry was paid, a couple was considered to be engaged or moving gradually to a married state, and, in some cases, even considered to be married already. For civil law purposes, however, the couple was required to be registered as married. Some customary practices — such as those pertaining to the handling of cases of adultery — were still recognized while others were falling into disuse. However, any customary practices which violated human rights were prohibited, such as cruel treatment or confiscation of the assets of widows upon the death of the husband.

8. Concerning question 2, she said that two non-judicial institutions had been established, namely a Truth and Reconciliation Commission and a National Human Rights Observatory. Following its ratification of the Rome Statute, in 2002, the Government had approached the Prosecutor of the International Criminal Court to request that an investigation be opened into violations of human rights. It had also requested the establishment of an International Criminal Tribunal to deal with crimes committed prior to July 2002, but so far, nothing had materialized. In addition, with support from the European Union and

MONUC, a broad justice programme had been put in place to bring to justice members of the militia and of armed forces in connection with human rights violations committed in Ituri and rape and other acts of sexual violence against women, girls and even men, in Equateur Province and an international arrest warrant had been issued for the general who had been the main instigator of the armed occupation of Bukavu. He had been reduced in rank and then dismissed from the armed forces.

9. Referring to question 3, she said that the Government had taken note of the Committee's views with regard to the various communications violations and in some cases had already begun to take steps in response to those views. For example, the 315 magistrates referred to in communication No. 933/2000 had all been restored to their positions and received compensation for lost earnings.

Equal rights of men and women, measures to prevent discrimination (articles 3 and 26)

10. Referring to question 4, she said that the new Constitution contained a provision banning all forms of discrimination against women and also asserting the principles of equitable representation of women within institutions and of gender mainstreaming in these institutions.

11. A preliminary bill containing proposals for bringing the Family Code into line with the Covenant was currently under discussion. Proposals included removing the provision regarding the legal incapacity of married women — which gave the husband excessive powers in terms of managing jointly owned family assets — and the one which discriminated against women in cases of adultery. Pressure was also being exerted on the Government to raise the minimum age for marriage for girls from 15 to 18, so that it would be the same age as for boys and to eliminate certain provisions from the Family Code.

12. Responding to question 5 in the list of issues, she said that the Government was undertaking major efforts to bridge the gap between the levels of education of boys and girls, and to that end had adopted a national strategy for the acceleration of girls' education with the financial and logistical support of the United Nations Children's Fund (UNICEF). The strategy aimed to improve the quality of primary education in 2000 schools, encourage more girls to enrol and remain in school and develop partnerships with other stakeholders in the basic education sector. Awareness-raising campaigns for parents were being implemented to challenge the traditional practice of sending boys rather than girls to school. During the first year of the campaign there had been a 36 per cent increase in the number of girls enrolled in the first year of primary school, as compared with a 29 per cent increase for boys, and in certain provinces the number had doubled.

13. Only eight of the 61 ministers and deputy ministers were women, as were 70 of the 500 members of parliament. There were 38 women heads of public enterprises out of a total of 264 and 37 diplomats out of 311. The first major success in terms of equal representation was the Independent Electoral Commission, whose composition was almost exactly 50 per cent female.

14. Referring to question 6 in the list of issues, she said that women and children had been the biggest victims of the conflict in her country. The Government was aware of the efforts needed to ensure rehabilitation and to that end had established programmes such as the joint initiative to combat sexual violence against women, young people and children, in collaboration with United Nations specialized agencies and NGOs. The initiative had a number of components, including psychological and medical care, social reintegration, legal assistance and reforms to combat sexual violence. Article 15 of the new Constitution stipulated that the authorities would ensure the elimination of sexual violence and that all sexual violence committed with the intent to break up a family or eradicate a people constituted a crime against humanity. In addition, a bill on the repression of sexual violence was currently under consideration. The Ministry of Defence was participating by taking steps to raise awareness among the military and police so as to reduce the incidence of such violations.

Right to life and prohibition of torture (articles 6 and 7)

15. Turning to question 7 on legal proceedings against police officers at Kalemie in 2004, she said that the case had been referred to the Office of the Public Prosecutor and that one of the police officers had been convicted.

16. In response to question 8, she said that on the United Nations International Day in Support of Victims of Torture, the Government, in collaboration with

NGOs and international partners, organized awareness-raising campaigns using posters and televised messages on the recourses available to victims. Victims were provided with legal assistance and offered rehabilitation. In the area of prevention, training was provided to judges and law enforcement officials on respecting the rights of persons suspected of violating criminal laws.

17. With regard to question 9, she said that the objectives of the transition included the re-establishment of peace, reconstruction, the restoration of territorial integrity and the re-establishment of State authority in the whole national territory. Armed groups had been integrated with a view to establishing a restructured national army under single command, that would be important in ensuring the safety of the upcoming elections. Armed groups had been demobilized and reintegrated into society. The justice system, particularly the military justice system, was being restructured, and the Military Court and the Court of State Security had been dissolved. Cooperation with the International Criminal Court was ongoing and joint military operations between the armed forces and MONUC were also continuing, particularly in Ituri and Sud Kivu.

18. Responding to question 10, she said that the moratorium on the death penalty had been lifted during the war when there had been a sudden increase in serious crime. However, since then no executions had been carried out and negotiations were being resumed to re-impose the moratorium.

Prohibition of slavery (article 8)

19. In reply to question 11, she said that although slavery was prohibited, there had been cases during the war, particularly in Ituri, of women and children being abducted by armed gangs and forced into sexual slavery; there had been no such cases since the war had ended.

Security of person and right not to be subjected to arbitrary detention (article 9)

20. Turning to question 12, she said that food shortages were, indeed, a major problem in prisons and a matter of concern for the Government. Although the 2006 budget had included an increase in provisions for prisons, funding remained inadequate. It was unusual for a person to be arrested for a minor offence. Generally they were subject to a fine. Long periods of preventive detention were attributable to the shortage of judges; efforts were currently under way to recruit new judges. The Ministry of Human Rights intervened in such cases to ensure that legislative provisions on detention were respected. Regarding detentions by the Special Presidential Security Group, when complaints were submitted to the Ministry of Human Rights, it referred them to the ministries of justice and defence which called for an end to such harassment and requested that perpetrators or suspects should be brought before a judge.

Prohibition of imprisonment for failure to discharge contractual obligations (article 11)

21. In reply to question 13, she said that imprisonment for failure to pay debts was not common, but did happen occasionally. The Ministry of Human Rights condemned such cases when they came to light and immediately informed the Ministry of Justice of the irregularities requesting that it instruct the judicial authorities to take the relevant action against those responsible. It was also necessary to establish if the case in question involved fraud. The Ministry of Human Rights organized human rights seminars and workshops with the authorities and the army; instruction on international human rights instruments was a component of basic training for new army recruits.

22. **Mr. Amor** said that it was regrettable that although the country report contained many legislative and constitutional details, it was lacking in information on what was being done in practice to implement the Covenant. He would welcome clarification on the position of the Covenant with respect to domestic law: could it be invoked before the courts, and had they applied it? The new Constitution stated that regularly concluded international treaties and agreements took precedence over domestic legislation, subject to their application by the other party. Was he correct in thinking that that applied only to bilateral treaties and not to the international human rights instruments? He would be interested to hear whether an inventory had been made of the instances where customary law conflicted with the Covenant.

23. Discrimination against women was often justified on the basis of tradition. He wondered whether a married woman still required her husband's permission to carry out certain legal procedures. The reasons for

the lack of participation by women in decision-making were outlined in paragraph 51 of the report. Clearly, much remained to be done to deal with such discrimination. How could women be self-confident if they did not have the opportunity to go to school? He would welcome more significant statistics on the education of women and on policy for the prevention of discrimination against women.

24. He was concerned at the high infant and maternal mortality rates, which also were indicative of social attitudes towards women, and at reports of slavery linked to prostitution, especially of girls, whose legal personality was not recognized in some cases. He would be interested to hear more factual details on those matters.

25. **Mr. Gicle Ahanhanzo** said that despite the many difficulties it faced, the country was making some progress and there was hope for the future. However, he regretted that the written report lacked substantive information and data concerning the real situation in the country. That lack of substance was all the more surprising given that an inter-ministerial committee had been established in December 2001 within the Ministry of Human Rights to prepare the State party's periodic reports to human rights treaty bodies. He likewise regretted that the delegation had not submitted written responses to the Committee's list of issues prior to the current meeting.

26. The Committee was especially interested in knowing whether and how the Covenant was being implemented in practice. He asked for information on the relationship between the Covenant and the new Constitution and the applicability of the Covenant in domestic law; the level of awareness of human rights; the influence of tribal ties; the role played by customary law, especially when it conflicted with legislation or the Covenant; and measures to promote the rights of women and children. He noted for example, in the area of women's rights, that according to article 448 of the Family Code, a married woman had to obtain her husband's authorization for all legal acts performed by her in person, and wondered what progress was being made towards bringing legislation into conformity with international legal instruments.

27. He also expressed great concern at the apparent impunity with which human rights violations were committed; impunity seemed almost to have become institutionalized. The Committee had received many reports from a variety of sources regarding violence and human rights violations, including attacks on human rights defenders, such as the assassination of Mr. Pascal Kabungula Kibembi, Executive Secretary of "Héritiers de la Justice", and repression, killings and rapes of civilians. More information must be provided on what steps, if any, the Government was taking to investigate such human rights violations and prosecute those responsible, in particular in cases involving the police and the military. He also requested more information on action taken by the State party to follow up the Committee's concluding observations.

28. *Ms. Palm took the Chair.*

29. **Mr. Solari Yrigoyen** welcomed the sincere desire of the delegation to promote human rights and said that the Committee took due account of progress made, for example, legal reforms and the adoption of the new Constitution, which were especially laudable given the difficult circumstances in the country. More information must, however, be provided on the actual situation of human rights in the country and greater efforts must be made to promote human rights awareness, not just within the Ministry of Human Rights, but throughout society and in particular within the police and the military.

30. He expressed concern that, although the State party was a signatory to the Convention against Torture, according to paragraph 73 of the report, torture did not constitute a specific offence under domestic legislation but was considered an aggravating circumstance. He was also concerned that article 16 of the new Constitution of February 2006 did not specifically mention torture and was therefore narrower in scope than article 15 of the transitional Constitution and article 7 of the Covenant. That was especially troubling since torture and inhuman treatment were commonplace in the Democratic Republic of the Congo.

31. With regard to violence against women, he deplored the fact that, for example, in the case of the Kalemie incidents, to date only one police officer had been found guilty of illegal acts. The Independent Expert on the situation of human rights in the Democratic Republic of the Congo had likewise noted the widespread violence against and mistreatment of women and children including rape at times at the hands of the police or the military and even teachers.

32. Although a bill dealing with the issue of torture had been prepared, according to non-governmental organizations its adoption had been stalled; he asked the delegation to report on the current situation of that bill. Although the delegation, in its oral responses had said that human rights awareness campaigns were being organized, magistrates and the civil service were receiving human rights training and human rights seminars were being organized for the law enforcement authorities, etc., given the many thousands of incidents involving violence, torture and rape, the State party's response was wholly inadequate.

33. With regard to the issue of enforced disappearances, although the delegation had referred, inter alia, to the re-establishment of the authority of the State, demobilization and legal reforms, it had not provided enough information. The United Nations Working Group on Enforced or Involuntary Disappearances and non-governmental organizations had highlighted the many cases of enforced disappearances attributable not only to militias and armed bands but also to law enforcement authorities and the military. Much more information must be provided on efforts to address that problem.

34. He deplored the lifting of the moratorium on the death penalty. If in practice there had been no executions for over a decade, other than under military jurisdiction (CCPR/C/COD/2005/3, para. 67), he wondered why the moratorium had been lifted and he called on the State party to move rapidly to abolish the death penalty.

35. **Mr. Johnson López** reiterated that the incidents referred to in question No. 12 of the list of issues, if true, would constitute violations of article 9 of the Covenant. He requested further information on the current situation and wondered whether the human rights guarantees contained in the February 2006 Constitution would be implemented. He also reiterated the Committee's concerns regarding military courts and the right to a fair trial and wondered whether 1,743 judges was truly sufficient to ensure a viable and effective judicial system for a population of almost 60 million.

36. *Ms. Chanet, Chairperson, resumed the Chair.*

37. **Mr. Shearer** asked whether the Government planned to give serious consideration to the Committee's views regarding the communications listed in question 3 on the list of issues and to respond to future requests from the Committee for information.

38. With regard to the actions of law enforcement personnel, he noted that the new Constitution drew a distinction between the national police and the military forces, but wondered if that distinction was observed in practice. He would like to know if human rights training programmes for the police and the military forces existed or were planned. Article 156 of the Constitution subjected police officers to the jurisdiction of military courts, which raised the question of impunity and the blurring of roles.

39. **Mr. Kälin** said that according to recent reports large-scale human rights violations continued to occur, even though the war had ended. He would like to hear what steps the Government was taking to address those large-scale violations, protect the civilian population and ensure that Government agents were not involved. The new Constitution guaranteed both the right to freedom of movement and to establish a home, and he was interested to hear what the Government was doing to protect the rights of internally displaced persons.

40. **Sir Nigel Rodley** said that while countries often maintained that the definition of torture was covered by the definition of other crimes, he had never before heard torture called merely an aggravating circumstance to another offence. In his view, the time had come to remedy that gap in the country's legislation. Given that there had been no cooperation by the Government on any communication which had come before the Committee since 1993, he asked what cooperation the Committee could expect in the future.

41. **Ms. Wedgwood** asked whether there were any programmes to evacuate civilians from the conflict areas in the eastern part of the country and whether any programmes or activities had been organized for their rehabilitation. She would also like to hear more about the inter-agency process for drafting the report and if the drafting committee had received a briefing from the relevant Ministries on the situation in the conflict zones.

42. Turning to the case of the wrongful dismissal of some 300 judges, she asked if anyone had been punished for their actions in connection with that case.

43. **Ms. Kalala** (Democratic Republic of the Congo) acknowledged that the data presented in the report might not be complete, as it had been drafted as the

war was ending. Because of the country's size and complexity and the difficulty with communication resulting from damage to infrastructure and pillaging of resources during the war, it would be difficult to retrieve the missing information, especially from the 1990s. However, difficulty in providing information, in particular regarding the communications referred to by several Committee members, should not be seen as unwillingness to participate in the process.

44. Under the new Constitution, many customary practices which had previously held women back had been abolished. The Government was working to establish a legal and judicial framework for gender equality, and, in turn, the Ministry for Women's Affairs was working to change mentalities. Women's low level of representation in the Government and National Assembly was part of the problem, as issues directly affecting women attracted little interest. Because of women's lack of self-confidence it had been difficult to find women willing to stand as candidates for the forthcoming elections to the National Assembly. The best way to change mentalities was through education; although modest, the gains in school enrolment for girls were beginning.

45. Finally, she appealed for understanding regarding the lack of statistics, pointing out that the Government had been in office for only three years and still faced many challenges; half its budget came from outside sources. Its programmes to combat HIV/AIDS and maternal and child mortality, while fragile, had the support and involvement of the President himself.

The meeting rose at 6 p.m.